

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING
amendment of ARM 36.10.132, and)	ON PROPOSED AMENDMENT
adoption of New Rule I and New Rule II)	AND ADOPTION
regarding firewarden qualifications,)	
duties, and legal representation for state)	
firefighters)	

To: All Concerned Persons

1. On November 13, 2008, at 1:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing in the Bannack Conference Room, at the Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. on November 6, 2008, to advise the agency of the nature of the accommodation that you need. Please contact Ted Mead, Bureau Chief, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804-3199; telephone (406) 542-4304; fax (406) 542-4217; e-mail tmead@mt.gov.

3. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

36.10.132 DEFINITIONS Unless the context requires otherwise, to aid in the implementation of the forest fire rules and regulations and as used in these rules:

(1) and (2) remain the same.

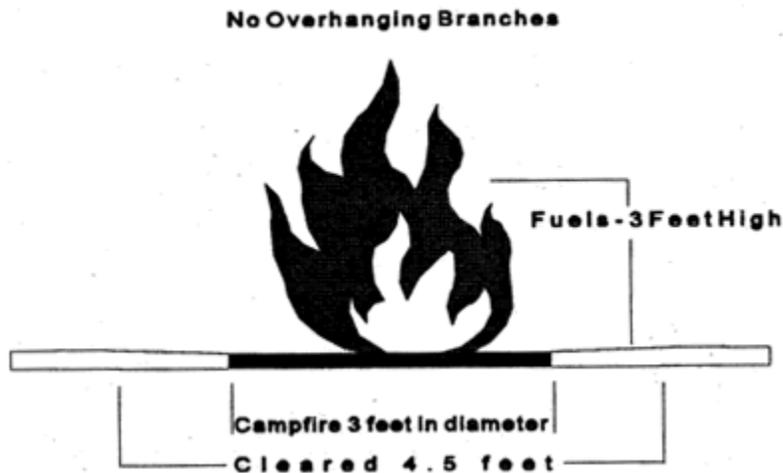
(3) "Campfire" means a fire set for cooking, warming, or ceremonial purposes which meets the following criteria:

(a) not more than ~~3~~ three feet in diameter or height;

(b) void of overhanging branches;

(c) ~~with~~ all combustible material is cleared at least ~~1-1/2~~ one and one-half times the diameter of the fire; or

(d) a barbecue in a noncombustible container.



(4) remains the same.

(5) "Department," as defined in 76-13-102(2), MCA, means the Department of Natural Resources and Conservation as provided for in 2-15-3301, MCA.

(6) "Firewarden" includes the following:

(a) a person employed by a local government fire protection entity provided for in Title 7, chapter 33, MCA, by the state of Montana, by the federal government, or by any other governmental or nongovernmental entity the department recognizes as a fire-protection agency. A firewarden must meet the qualifications of a firewarden as provided in 76-13-116, MCA, and [NEW RULE I]; and

(b) "firefighter," as that term is used in [NEW RULE II].

(5) remains the same but is renumbered (7).

~~(6)~~ (8) "Forested land" means land that has been classified as forest land by the department and has enough timber, standing or down, slash, or brush to constitute in the judgment of the department a fire menace to life or property. Grassland and agricultural areas are included when those areas are intermingled with, or contiguous to and no further than one-half mile from areas of forest land.

(7) through (9) remain the same but are renumbered (9) through (11).

~~(10)~~ (12) "Recognized fire-protection agency" means an agency organized for the purpose of providing fire protection and recognized by the department board as giving adequate fire protection to forest lands in accordance with rules adopted by the department board.

(11) remains the same but is renumbered (13).

~~(12)~~ (14) "Shovel" means vehicle, equipment, and chainsaw operator shovels that will have a minimum overall length of 36 inches with and a round pointed shovel head with a minimum width of 6 six inches.

(a) Shovels required for campfires must be at least 24 inches in length with a pointed shovel head. Folding handles qualify.

AUTH: ~~76-13-104, 76-13-109, 76-13-140, MCA~~

IMP: ~~76-13-104, 76-13-109, 76-13-140, MCA~~

REASONABLE NECESSITY: The amendments are meant to provide additional definitions regarding firewardens and firefighters to comply with 76-13-104(7), MCA, and to partially implement 76-13-140(2), MCA.

4. The rules proposed to be adopted provide as follows:

NEW RULE I FIREWARDEN QUALIFICATIONS AND DUTIES (1) All firewardens may perform the duties prescribed in (3) on private, state, or state-protected federal lands.

(2) To qualify as a firewarden, a person must possess knowledge of wildland fires and be able to prevent, detect, suppress, or investigate wildland fires, and to coordinate, or in any manner facilitate, the furtherance of the fire policy provided for in 76-13-115, MCA.

(3) In addition to the duties prescribed in 76-13-116, MCA, a firewarden is responsible for carrying out the following duties:

(a) perform as a liaison between local, state, and federal agencies, incident management teams, and suppression forces as relates to wildland fire;

(b) coordinate training, prevention, detection, suppression, or mitigation of wildland fire activities between local, state, and federally recognized fire-protection agencies; and

(c) assist in determining the origin and cause of wildland fires and in recovering wildland fire-suppression costs and, if necessary, assist with the criminal prosecution of wildland fire-related criminal offenses.

AUTH: 76-13-104, MCA

IMP: 76-13-104, MCA

REASONABLE NECESSITY: New Rule I is meant to prescribe a broad list of qualifications and duties for firewardens. New Rule I is also meant to comply with the mandate contained in 76-13-104(7), MCA.

NEW RULE II LEGAL REPRESENTATION FOR STATE FIREFIGHTERS

(1) The department shall pay reasonable attorney fees and costs for outside legal counsel to defend a firefighter employed by the department against a criminal prosecution for a good faith act or omission by the firefighter arising from the firefighter's performance of duties during a wildfire. The department may determine whether the firefighter's act or omission was in good faith and arising from the performance of the firefighter's duties during a wildfire. The requirement to pay attorney fees and costs does not apply to any postconviction legal proceedings.

(a) In determining whether a firefighter's act or omission was in good faith and arose from the firefighter's performance of duties during a wildfire, the department will consider, in addition to the factors contained in [NEW RULE I(2) and (3)], any other factors that the department determines are, on a case-by-case basis, relevant to that determination.

(2) In determining whether attorneys fees and costs are reasonable, the department will compare those charged with those that have been, or are normally charged under the circumstances in the county in which the criminal defense takes

place, or if the department considers it necessary, those that are charged within the state or in states surrounding Montana.

(a) The department will take into account the complexity of a criminal defense in determining whether attorneys fees and costs are reasonable.

(b) The department will not pay attorneys fees and/or costs that exceed those that are reasonable.

AUTH: 76-13-140, MCA

IMP: 76-13-140, MCA

REASONABLE NECESSITY: New Rule II is meant to provide direction related to the manner the department will determine whether a state firefighter has acted in good faith in carrying out the firefighter's duties during a wildfire. New Rule II also provides direction in determining reasonable attorneys fees and costs and is meant to comply with the mandate contained in 76-13-140(2), MCA.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Doug Williams, Rural Fire Coordinator, Department of Natural Resources and Conservation, P.O. Box 1204, Fort Benton, MT 59442; telephone (406) 622-5455; fax (406) 622-5455; e-mail dwilliams4@mt.gov, and must be received no later than 5:00 p.m. on November 21, 2008.

6. Ted Mead, Fire and Aviation Management Bureau Chief, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804 has been designated to preside over and conduct the hearing on November 13, 2008.

7. An electronic copy of this Notice of Public Hearing on Proposed Amendment and Adoption is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment and Adoption conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to Lucy Richards, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT, 59620; telephone (406) 444-6699; fax (406) 444-2684; or e-

mail lrichards@mt.gov or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsors were notified by regular mail on November 21, 2007.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton

MARY SEXTON

Director

Natural Resources and Conservation

/s/ Mark Phares

MARK PHARES

Rule Reviewer

Certified to the Secretary of State on October 14, 2008.